

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

OPINION AND ORDER

On November 19, 2010, Plaintiff, a state prisoner appearing *pro se*, filed a 42 U.S.C. § 1983 civil rights complaint (Dkt. # 1), and a motion to proceed *in forma pauperis* (Dkt. # 2). By Order filed November 24, 2010 (Dkt. # 3), the Court granted Plaintiff's motion to proceed *in forma pauperis*, determined that the complaint fails to state a claim upon which relief may be granted, and directed Plaintiff to file an amended complaint to cure deficiencies. Plaintiff's deadline for compliance was December 24, 2010. She was specifically advised that if she failed to file an amended complaint by the deadline, her complaint would be dismissed without prejudice for failure to state a claim upon which relief may be granted. See Dkt. # 3.

To date, Plaintiff has not filed an amended complaint. The deadline for compliance has passed. As a result, Plaintiff's civil rights complaint shall be dismissed without prejudice for failure to state a claim upon which relief may be granted.

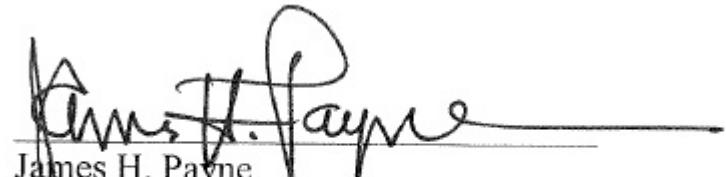
Plaintiff was incarcerated when she commenced this action and she has been granted leave to proceed *in forma pauperis*. In addition, her complaint fails to state a claim upon which relief may be granted. As a result, the complaint shall be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

This dismissal shall count as Plaintiff's first "prior occasion" under 28 U.S.C. § 1915(g) (providing that "[i]n no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury").

ACCORDINGLY, IT IS HEREBY ORDERED that:

1. Plaintiff's civil rights complaint (Dkt. # 1) is **dismissed without prejudice** for failure to state a claim upon which relief may be granted.
2. The Clerk is directed to **flag** this dismissal pursuant to 28 U.S.C. § 1915(e)(2)(B) as Plaintiff's first "prior occasion" for purposes of 28 U.S.C. § 1915(g).

DATED THIS 21st day of April, 2011.



James H. Payne
United States District Judge
Northern District of Oklahoma